

July 23, 2007

MEMORANDUM TO: Cynthia A. Carpenter, Director
Office of Enforcement

FROM: Luis A. Reyes **/RA/**
Executive Director for Operations

SUBJECT: RESPONSE TO STAFF RECOMMENDATIONS ON DIFFERING
PROFESSIONAL OPINIONS PROGRAM 2006 REVIEW

The Office of Enforcement (OE) completed the 2006 Program Review of the Differing Professional Opinions (DPO) Program. Within the 2006 Program Review document, OE made one recommendation for the Executive Director for Operations to consider. Enclosed is the Office of the Executive Director for Operations (OEDO) response to the recommendation. In addition, OEDO directs that, in the future, the following information be provided to the OEDO along with the report:

1. Annual total cost (managing and implementing) of the DPO program;
2. Information regarding the number of staff submitting DPO's; and
3. Percentage of DPO's that are appealed.

If you have any questions, please contact Andrew Persinko in the OEDO at 301-415-1703.

Enclosure: As stated

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**OFFICE OF THE EXECUTIVE DIRECTOR FOR OPERATIONS
ANALYSIS OF RECOMMENDATION FROM
DIFFERING PROFESSIONAL OPINIONS PROGRAM
2006 PROGRAM REVIEW**

The Office of Enforcement (OE) completed the 2006 Program Review of the Differing Professional Opinions (DPO) Program. Within the 2006 Program Review document, OE made one recommendation for the Executive Director for Operations to consider. Below is the recommendation with the analysis of the recommendation.

Recommendation

Approve a deviation from the provisions of the NRC Management Directives System (in accordance with section 1.1-033(c) of MD 1.1, "NRC Management Directives System") and eliminate the process step of office managers reviewing and returning DPO Panel reports addressed in section D(4)(g) of the MD 10.159 Handbook, resulting in the DPO processing strategy discussed in Appendix F to this report.

Analysis of the Recommendation

Agree in part with the recommendation. The recommendation would result in eliminating the following language that is currently in MD 10.159:

"The OD or the RA should review the panel's recommendations. He or she may return the report to the panel with specific comments (e.g., revise for clarification or further information) when necessary. Revised panel reports will be provided to the OD or the RA generally within 7 calendar days. The DPOPM will advise the submitter if an extension is warranted. (g)"

The opportunity to comment on the panel report is not necessary to meet program objectives. Eliminating the opportunity for the office managers to comment would avoid the perception that the DPO panels were not independent of the office managers and would improve the timeliness of the process. While no longer allowed to comment on the panel report, office managers still make conclusions and recommendations in DPO decisions that can differ from those made by the panels. Additionally, if an office manager needs clarification on the panel report or if the office manager believes that the report needs clarification, the office manager can seek the needed clarification by interviewing the DPO panel and provide any needed clarification in the DPO decision. The benefits of eliminating the opportunity for office managers to comment on the panel report and request a revised report; namely, avoiding the perception that the DPO panels are not independent of the office managers and improving the timeliness of the process, outweigh any loss of flexibility for the office managers.

However, by eliminating the opportunity for office managers to comment on the panel report, the office managers' only recourse if the panel report is incomplete is to complete the report in the DPO decision. The panel reports should be complete documents and should not have to rely on the DPO decision to complete them. Therefore, rather than eliminating paragraph D(4)(g) of the MD 10.159 Handbook, the paragraph should be revised to read as follows:

"If the OD or RA determines that the report is incomplete, he or she should return the report to the panel normally within 7 calendar days with specific directions for completion.

Revised panel reports will be provided to the OD or the RA generally within 7 calendar days. The DPOPM and submitter should receive copies of OD or RA memoranda involving incomplete reports and revised panel reports. (g)”

Revising the MD in this fashion would allow office managers to return panel reports that are incomplete and direct the panel to complete the report, rather than having to complete the report in the DPO decision.